

House Study Bill 649 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
STATE GOVERNMENT BILL BY
CHAIRPERSON COWNIE)

A BILL FOR

1 An Act concerning public construction bidding by establishing a
2 pilot program for alternative project delivery processes for
3 certain public projects and utilizing alternative selection
4 procedures for certain professional services and making an
5 appropriation.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 26.4, Code 2011, is amended to read as
2 follows:

3 ~~26.4 Exemptions from competitive bids and quotations~~
4 Professional services procurement.

5 1. Architectural, landscape architectural, design-build, or
6 engineering design services procured for a public improvement
7 are not subject to sections 26.3 and 26.14.

8 2. Professional services provided for a public improvement
9 by an architect registered under chapter 544A, an engineer
10 or land surveyor licensed under chapter 542B, a landscape
11 architect licensed under chapter 544B, or a design-build entity
12 as defined in section 26.14B, shall be procured utilizing a
13 qualifications-based and direct negotiation selection process.

14 3. Selection of professional services through a
15 qualifications-based and direct negotiation selection process
16 shall proceed, in order, through the following steps:

17 a. The governmental entity shall issue for the purpose
18 of fair and open competition a public notice of request for
19 qualifications and a description of the nature and type of
20 public improvement proposed and preliminary scope of services
21 required.

22 b. The governmental entity shall form a selection committee
23 of not less than three persons to evaluate and rank the
24 qualifications of the firms submitting qualifications and enter
25 into negotiations.

26 c. In evaluating the qualifications, the selection committee
27 shall consider the following criteria:

28 (1) The specialized experience and technical competence of
29 the firm with respect to the type of services required.

30 (2) The capacity and capability of the firm to perform the
31 work in question, including specialized services, within the
32 time limitations fixed for the completion of the project.

33 (3) The past record of performance of the firm with respect
34 to such factors as control of costs, quality of work, and
35 ability to meet schedules.

1 (4) The firm's proximity to and familiarity with the area in
2 which the project is located.

3 (5) Consideration shall not be given, or information
4 requested, concerning fees, prices, completion times, or
5 any other cost information at any point prior to entering
6 negotiations.

7 d. Following the evaluation of the qualifications of the
8 firms, the selection committee shall rank the three most highly
9 qualified firms in the order of best qualified first and shall
10 enter into negotiations pursuant to the following requirements:

11 (1) The selection committee shall enter into negotiations
12 only with the firm considered best qualified and capable of
13 performing the desired work. The selection committee shall
14 seek to reach agreement on scope, contract terms, fair and
15 reasonable fees, and any other necessary items.

16 (2) If, in the opinion of the selection committee, the
17 committee is unable to negotiate a satisfactory contract with
18 the best qualified firm, negotiations with that firm shall
19 be terminated. The selection committee shall then undertake
20 negotiations with the next best qualified firm. If there is a
21 failing of accord with the second firm, negotiations with such
22 firm shall be terminated. The selection committee shall then
23 undertake negotiations with the third qualified firm.

24 (3) If the selection committee is not able to negotiate
25 a satisfactory contract with any of the three most qualified
26 firms, the selection committee shall reevaluate the necessary
27 professional services, including the scope, estimated cost,
28 complexity, and reasonable fee requirements. The selection
29 committee shall then reevaluate qualifications and compile a
30 new list of not less than three qualified firms and proceed in
31 accordance with the provisions of this section.

32 **Sec. 2. NEW SECTION. 26.14B Alternative project delivery**
33 **pilot program — advisory committee.**

34 **1. As used in this section, unless the context otherwise**
35 **provides:**

1 *a. "Alternative project delivery"* means procuring and
2 delivering design and construction services for a public
3 project according to one of the selection methods outlined in
4 this section.

5 *b. "Construction management services"* means an alternative
6 project delivery method whereby services are provided by
7 a construction manager in a manner similar to a general
8 contractor, and which requires the construction manager to
9 solicit competitive bids for the trade packages or subcontracts
10 developed for the public project and to enter into the trade
11 contracts or subcontracts for the public project. Construction
12 management services may include but are not limited to
13 scheduling, value analysis, system analysis, constructability
14 reviews, progress document reviews, subcontractor involvement
15 and prequalification, subcontractor bonding policy, budgeting
16 and price guarantees, and construction coordination.

17 *c. "Construction manager"* means an individual, partnership,
18 joint venture, corporation, or other legal entity that
19 utilizes skill and knowledge of general contracting to perform
20 construction management services and preconstruction services,
21 competitively procures and contracts with specialty contractors
22 or subcontractors, and assumes the responsibility and the risk
23 for construction delivery within a specified cost and schedule.

24 *d. "Construction services"* means the process of planning,
25 building, equipping, altering, repairing, improving, or
26 demolishing any structure or appurtenance thereto, including
27 facilities, utilities, or other improvements to real property,
28 but excluding highways, roads, bridges, dams, or stand-alone
29 parking lots.

30 *e. "Design professional"* means an architect registered under
31 chapter 544A, an engineer licensed under chapter 542B, or a
32 landscape architect licensed under chapter 544B.

33 *f. "Design-build entity"* means an individual, partnership,
34 joint venture, corporation, or other legal entity that
35 furnishes design-build services, whether by itself or through

1 subcontracts.

2 *g. "Design-build services"* means a method of alternative
3 project delivery for which both design and construction
4 services are provided under one contract. *"Design-build*
5 *services"* may include architecture, engineering, and related
6 design services required for a given project and the labor,
7 materials, and other construction services for the project.

8 *h. "Preconstruction services"* means a series of services
9 including but not limited to design review, scheduling,
10 estimating, cost control, value engineering, constructability
11 evaluation, and preparation and coordination of bid packages.

12 *i. "Public project"* means a project under the control of
13 a governmental entity that is paid for in whole or in part
14 with funds of the governmental entity, including a building
15 or improvement constructed or operated jointly with any other
16 public or private agency that has an estimated total cost of
17 more than one hundred thousand dollars. A *"public project"* may
18 include planning, acquiring, designing, building, equipping,
19 altering, repairing, improving, or demolishing any structure or
20 appurtenance thereto, including facilities, utilities, or other
21 improvements to any real property owned by the governmental
22 entity, but excluding highways, roads, bridges, dams, or
23 stand-alone parking lots. However, a parking lot included as
24 part of the site work of a public project may be included as
25 part of a construction management contract or a design-build
26 services contract. Parking ramps and parking garages are not
27 considered to be parking lots and may be a "public project"
28 constructed utilizing alternative project delivery methods.

29 2. Notwithstanding any provision of law to the contrary,
30 the following selection methods may be utilized for a public
31 project procured through an alternative project delivery
32 process as provided in this section:

33 *a.* The construction management at-risk selection method
34 is a project delivery process in which a construction manager
35 contract separate from a design professional contract provides

1 for preconstruction services, and a second construction manager
2 contract provides an at-risk obligation for the construction
3 manager to carry out construction with a contractual maximum
4 price guarantee for the public project.

5 *b.* The design-build qualifications-based selection method is
6 a project delivery process in which a design-build entity is
7 selected and a contract negotiated as provided in section 26.4,
8 subsection 3, to design and construct a public project for a
9 specific budget under a single contract.

10 *c.* The design-build best value-based selection method
11 is a project delivery process in which a design-build entity
12 is selected on the basis of both price and qualifications to
13 design and construct a public project for a specific budget
14 under a single contract. Consideration of price may refer to
15 either fees and general conditions or to total construction
16 cost.

17 *d.* The design-build bridging-based selection method is
18 a project delivery process in which a design professional
19 contract provides for the preparation of a design concept and
20 scope of work documents as bidding documents and for continuing
21 assistance during construction. The bidding documents shall
22 be utilized to select a design-build entity who shall enter
23 into a contract to provide for the completion of the design and
24 the construction of the contract. The design professionals
25 utilized by the design-build entity shall be independent of the
26 design professionals utilized through the design professional
27 contract.

28 3. *a.* Notwithstanding any provision of law to the contrary,
29 the department of administrative services and state board of
30 regents may utilize alternative project delivery selection
31 methods for the fiscal period beginning July 1, 2012, and
32 ending December 31, 2016, in coordination with the alternative
33 project delivery pilot program advisory committee, for public
34 projects. The state board of regents may select up to three
35 public projects, and the department of administrative services

1 one public project, each fiscal year for three consecutive
2 fiscal years beginning with the fiscal year commencing July 1,
3 2012, utilizing alternative project delivery selection methods.
4 Selection of public projects during a fiscal year shall be
5 completed by December 1 of that fiscal year.

6 *b.* The selection of public projects pursuant to the pilot
7 program shall be subject to the following:

8 (1) To the extent practical, public projects within
9 the pilot program shall include both renovation and new
10 construction projects.

11 (2) To the extent practical, public projects within the
12 pilot program shall vary in size, complexity, scheduling, and
13 cost.

14 (3) To the extent practical, the state board of regents and
15 the department of administrative services shall each utilize
16 all permitted alternative project delivery selection methods
17 during the pilot program.

18 (4) The state board of regents shall make final
19 determinations on projects and types of alternative project
20 delivery processes for its portion of the pilot program.

21 (5) The department of administrative services shall make
22 final determinations on projects and types of alternative
23 project delivery processes for its portion of the pilot
24 program.

25 4. *a.* An alternative project delivery pilot program
26 advisory committee is established consisting of the following
27 members:

28 (1) One member appointed by the state board of regents.

29 (2) One member appointed by the director of the department
30 of administrative services.

31 (3) One member appointed by the Iowa state building and
32 construction trades council.

33 (4) One member appointed by the Iowa chapter of the American
34 institute of architects.

35 (5) One member appointed by the American council of

1 engineering companies of Iowa.

2 (6) One member appointed by the Iowa chapter of the
3 design-build institute of America.

4 (7) One member appointed by the master builders of Iowa.

5 (8) One member appointed by the mechanical contractors
6 association of Iowa.

7 (9) One member appointed by the Iowa chapter of the American
8 society of landscape architects.

9 (10) One member appointed by the associated builders and
10 contractors of Iowa.

11 *b.* Each member of the committee shall serve until December
12 31, 2016, or until the member resigns. A vacancy on the
13 committee shall be filled in the same manner as the original
14 appointment.

15 *c.* The member appointed by the state board of regents and
16 the member appointed by the director of the department of
17 administrative services shall serve as co-chairpersons of the
18 committee.

19 *d.* Meetings of the committee may be called by the
20 chairperson or by a majority of the members.

21 *e.* A majority of the members of the committee constitutes a
22 quorum. Any action taken by the committee must be adopted by
23 the affirmative vote of a majority of its membership.

24 *f.* A member shall not vote on a matter before the committee
25 if the individual has a pecuniary, equitable, or other interest
26 in the matter or conditions exist that would interfere with the
27 member's ability to properly discharge the member's duties.

28 *g.* The duties of the advisory committee shall include all
29 of the following:

30 (1) Advise the state board of regents and the department of
31 administrative services in selecting public projects and the
32 appropriate selection methods as provided in this section.

33 (2) File a progress report with the general assembly at the
34 beginning of each legislative session. A final report shall be
35 filed by the advisory committee with the general assembly no

1 later than January 1, 2017. The final report shall identify
2 the advantages and disadvantages of all authorized alternate
3 project delivery processes for public improvement projects
4 based on evaluation of the pilot projects.

5 Sec. 3. ALTERNATIVE PROJECT DELIVERY PILOT PROGRAM —
6 REBUILD IOWA INFRASTRUCTURE FUND APPROPRIATION.

7 There is appropriated from the rebuild Iowa infrastructure
8 fund to the following departments and agencies for the fiscal
9 period beginning July 1, 2012, and ending June 30, 2016, the
10 following amounts, or so much thereof as is necessary, to be
11 used for the purposes designated:

12 1. DEPARTMENT OF ADMINISTRATIVE SERVICES

13 For expenses associated with administration and reporting
14 requirements of the alternative project delivery pilot program
15 as established by section 26.14B:

16 \$ 10,000

17 2. BOARD OF REGENTS

18 For expenses associated with administration and reporting
19 requirements of the alternative project delivery pilot program
20 as established by section 26.14B:

21 \$ 30,000

22 EXPLANATION

23 This bill concerns public construction bidding.

24 Code section 26.4, concerning exemptions from competitive
25 bids and quotations, is amended to add design-build services
26 to the list of services exempt from competitive bidding under
27 Code chapter 26. The bill further amends the Code section to
28 establish the method by which professional services exempt
29 from competitive bidding under the Code section shall be
30 procured. The bill provides that these professional services
31 shall be procured utilizing a qualifications-based and direct
32 negotiation selection process. The bill provides that the
33 selection process shall be conducted in two stages. First, the
34 governmental entity shall use a qualifications-based approach
35 through a selection committee in selecting three entities that

1 are qualified to perform the services to be procured. The
2 bill describes the applicable criteria in determining the best
3 qualified firms. Following selection of three firms, the
4 bill provides that the governmental entity shall enter into
5 negotiations with the highest ranked firm. If negotiations are
6 unsuccessful, the government entity can then proceed to the
7 next highest ranked firm.

8 New Code section 26.14B establishes an alternative project
9 delivery pilot program.

10 The bill defines design-build services as an alternative
11 project delivery method in which both design and construction
12 services are provided under one contract.

13 The bill authorizes the department of administrative
14 services and state board of regents to utilize alternative
15 project delivery selection methods for the fiscal period
16 beginning July 1, 2012, and ending December 31, 2016, in
17 coordination with the alternative project delivery pilot
18 program advisory committee established by the bill, for
19 public projects. The state board of regents is authorized
20 to select up to three public projects, and the department of
21 administrative services one public project during each fiscal
22 year during the pilot program period. The bill describes the
23 various methods by which a public project is to be completed
24 and provides that the method to be used shall be selected by
25 the applicable governmental entity in coordination with the
26 pilot program advisory committee. The methods are construction
27 management at-risk, design-build qualifications-based,
28 design-build best value-based, and design-build bridging-based.

29 The new Code section also establishes an alternative project
30 delivery pilot program advisory committee with 10 members which
31 shall advise the state board of regents and the department of
32 administrative services in selecting public projects and the
33 appropriate selection methods as provided in the bill. The
34 bill also requires the advisory committee to submit an annual
35 progress report to the legislature concerning the pilot program

1 as well as a final report concerning the program by January 1,
2 2017.

3 The bill appropriates moneys from the rebuild Iowa
4 infrastructure fund to the department of administrative
5 services and the board of regents for the fiscal period
6 beginning July 1, 2012, and ending June 30, 2016, for expenses
7 associated with the pilot program.